

Application No.: 10/803,284
Response to April 21, 2005 Office Action

REMARKS

In response to the objection in the current Office action, the current claim set is again provided with all of the claims including the identifier "Original."

The Office Action rejected claims 1 and 5 based on double patenting of the "same invention" type over claims 1 and 11 of U.S. Patent No. 6,708,885. These claims have been cancelled.

The Office Action rejected claims 2-4 and 6-8 under the judicially created doctrine of obviousness-type double patenting over claims 1-8 and 11-18 of U.S. Patent No. 6,708,885. Attached to this paper is a terminal disclaimer that should moot this rejection. Please note that the applicant does not necessarily agree with this rejection and he relies on the Patent Office's statement that "[t]he filing of a terminal disclaimer to obviate a rejection based on nonstatutory double patenting is not an admission of the propriety of the rejection." MPEP 804.02, May 2004 Revision of 8th edition, citing *Quad Environmental Technologies Corp. v. Union Sanitary District*, 946 F.2d 870, 20 USPQ2d 1392 (Fed. Cir. 1991). (The "filing of a terminal disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither a presumption nor estoppel on the merits of the rejection.")

The Office Action also asserts that the priority date for claims 2-4 and 6-8 is 18 March 2004. The applicant does not agree with this assertion. The applicant again notes that he has properly claimed the benefit of the earlier priority date under 35 USC 120 and 37 CFR 1.78 (as pointed out in applicant's Response to August 24, 2004 Office Action). The Office Action merely asserts that the subject matter found in claims 2-4 and 6-8 is not found in the earlier application and does not point to any deficiency in applicant's claim to benefit of an earlier priority date. However, because there appears to be no outstanding rejection that relies on the priority date asserted by the Office Action, the point should be moot as there is no basis for rejecting claims based on a possible disagreement concerning a priority date. Because there is no outstanding rejection that relies on the priority date, there is no need for the applicant to point out where the claimed subject matter is disclosed in the previous application. Therefore, the applicant reserves the right to demonstrate that one or more of the subject claims is disclosed in the previous application if any subsequent Office Action includes a rejection that relies on the asserted priority date or if the priority date becomes an issue in a subsequent proceeding, including any court action.

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MPEP 714.14 states that amendments after final should "cancel claims, adopt examiner suggestions, remove issues for appeal, or in some other way requires only a cursory review by the examiner." Claim 1 and 5 have been cancelled and claims 2 and 6 have been amended to include the limitations of claims 1 or 5. This removes statutory double-patenting as an issue for appeal (or allowance). Additionally, the attached terminal disclaimer should removing all other issues that might prevent allowance.

In lieu of the remarks from the previous amendment, all claims should be in condition for allowance. **The undersigned attorney requests the opportunity to discuss any perceived problems with the claims, to further explain any of the points raised herein, and to discuss placing claims in condition for allowance.** The undersigned can be reached through his direct phone number (312) 223-0010 extension 144. Please advise when you would be available for a telephone conference.

Respectfully submitted,

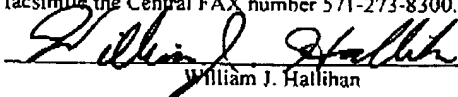
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Certificate of Mailing

I hereby certify that, on July 21, 2004, this correspondence (including the Terminal Disclaimer attached hereto) is being transmitted via facsimile to the Commissioner for Patents at facsimile the Central FAX number 571-273-8300.


William J. Hallihan